XII-189 (Jail) C J.P.R./9-94

CF0000061853

CrA 450/97 Division Bench (Jabalpur)

APPEAL OF PRISONER

High Court of Madhya Pradesh
JABALPUR (2)
19 FEB 1997
151
Reg. No.
Recept Clerk
High Court, Jabalpur

Cr. Case No. 02/95 Name लीलाबाई

Father's name पति अशपाल सिंह

Residence मु. बरलावन थाना. कोल Age 38 वर्ष

Sentenced to जिला. बिलासपुर on 4 फरवरी 97

Under Section आजीवन कारावास by श्री. मनहर लाल खरे II A.D.J. Bsp
302 भा. द. वि.

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the Appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement _____

2 Date on which copy received 04 फरवरी 1997

3 Date on which Appeal sent M.68 | octogen | 97 Date 14-2-97

4 Whether the prisoner wishes to be represented or not Yes

No 02/95 Name _____

Confined in जिला Jail लीलाबाई बिलासपुर

No. 68 Dated 14 - 2 - 1997

Forwarded to the रजिस्ट्रार, माननीय उच्च न्यायालय जबलपुर (म. प्र.)

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

अधीक्षक
जिला जेल बिलासपुर
Superintendent

_____ Jail _____

Date of receipt in _____ Office withdrawn

Date of receipt of record to accompany the _____

Memo of Appeal to the Appellate court _____

No _____ Dated _____ 199 _____

Forwarded to the

Date of receipt in Appellate court _____

(P. T. O.)

(19)

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मामला क्रमांक G.A.450/97 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक और आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

~~Division Bench:~~

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ

20-3-2006

Mrs. Indira Tripathi, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. D.K Gwalre, Deputy Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J:-

The appellant has preferred this criminal appeal under Section 374 (2) of the Code of Criminal Procedure questioning legality & correctness of the judgment of conviction and order of sentence dated 4th February, 1997, passed by the 2nd Additional Sessions Judge, Bilaspur, in Sessions Trial No.525/95, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that Gangaram (PW-1) lodged the report (Ex.P-1) in Police Station: Gourela on 25-10-1995 at 11 a.m. to the effect that at about 7 a.m. when Kotwar Patiram came and informed him that Jaipal has been murdered, he was at his residence, he along with Jamuna Ahir & Kotwar went to the house of Jaipal and saw that wife of the deceased (present accused/appellant) was weeping while sitting in the room. He saw that the body of Jaipal was lying there and there was deep injury on the head. On enquiry,

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

wife of the deceased informed that at about 2 a.m. to 2.30 a.m. on hearing the sound of chain of window she woke up and informed her husband about the sound of chain on which he said that there might be dog. But she said that it appears to be the sound of foot of some thief. Jaipal lit the lamp (chimney) and he along with his wife & son Chetan went towards the back door and saw that chain of the door was open. Jaipal tried to open the door, but that was closed from outside. They returned to the house and saw that two persons entered their house, one was carrying iron rod and both these persons had assaulted her husband with the axe.

Receiving this report, the Station House Officer registered offence under Sections 302 & 460 read with Section 34 of the I.P.C. and left for the scene of occurrence. After giving notice (Ex.P-3) to the Panchas, he prepared the Panchnama (Ex.P-2) of the body of Jaipal. Blood stained soil and plain soil was taken into possession from the place of occurrence under Ex.P-4. Axe, the weapon of offence and one iron rod were taken into possession from the place of occurrence under Ex.P-5. Petticoat, blouse and one sari of the accused were taken into possession under Ex.P-6. The body of Jaipal was sent for post-mortem examination to Community Health Centre, Gourela under Ex.P-11 where Dr. L.N. Patel (PW-8) conducted post-mortem on the body of Jaipal and prepared the post-mortem report (Ex.P-7). Blood stained articles were sent for chemical examination to Forensic Science Laboratory, Sagar, from where the report (Ex.P-19) was received and Serologist report (Ex.P-20) was also received.

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After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Pendra, who in turn committed the case to the Sessions Judge, Bilaspur, from where learned 2nd Additional Sessions Judge, Bilaspur, received the case on transfer for trial..

The prosecution examined nine witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which she denied the material evidence appearing against her and stated that she has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the arguments of learned counsel for the parties, convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Mrs. Indira Tripathi, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. D.K. Gwalre, learned Deputy Govt. Advocate on behalf of the State/respondent.

The homicidal death of Jaipal is not in dispute.

As far as involvement of the accused/appellant in committing the murder of her husband Jaipal is concerned, conviction rests on the evidence of Chetan (PW-4) who is son of the accused and the deceased, aged about 11 years. In his evidence, he has stated that in the fateful night her mother asked him and his father to wake up, on which his father lit the lamp and he along with his mother & father went towards backside of the house in the kitchen garden side. Thieves were pushing back door and after opening the door, they entered the house and pushed his father with Lathi as a result of

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

which his father fell down and thereafter his mother attacked his father with the axe on his head. Seeing this, he ran away. He went to the house of one Mangal and informed him, on which Mangal asked to call other neighbourers. All of them went to the house where his mother asked them that there is darkness therefore, let her lit the lamp, on which she lit the lamp and they saw that his father was writhing in pain and blood was oozing out of the head of his father. After some time, his father succumbed to the injuries sustained by him. In cross-examination para 7, he has admitted that when his father fell down, lamp went off as a result of which there was darkness. In para 8, he has stated that thief was having torch in his hand and he aimed the light of torch towards his father on which his mother assaulted his father with the axe. On the suggestion of counsel for the defence, he said that he does not know that when his mother was assaulting the thief with the axe, same fell accidentally on his father. In para 9, he has stated that he had not informed Mangal & Suklal that thieves assaulted his father with the axe, whereas, Mangal (PW-5) has stated in his evidence that Chetan came to his house and informed that two thieves have assaulted his father. Similar is the evidence of Hemlal (PW-6) & Suklal (PW-7).

Learned counsel for the appellant argued that the evidence of Chetan (PW-4) does not inspire confidence for the reason that in cross-examination of this witness it has come that when his father fell down, lamp went off as a result of which there was darkness and in that context this witness was not able to witness as to who assaulted the deceased. She further argued that

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moreover as per the evidence of this witness in para 8, it has come that whether accidentally, the axe fell on the head of his father he does not know.

On the other hand, learned counsel appearing for the State/respondent supported the judgment.

Having heard learned counsel for the parties, we have perused the evidence on record and for the following reasons we find that the evidence of Chetan (PW-4) does not inspire confidence of the Court and the prosecution has not been able to establish involvement of the accused in assaulting her husband with axe, beyond reasonable doubt.

As it is evident from the evidence that at the time of incident, the deceased, the accused and Chetan (PW-4) were in the house. As per the evidence of Chetan (PW-4), when he saw that his mother attacked his father with the axe, he immediately ran away and informed Mangal, Hemlal & Suklal. He has further stated in para 9 of his evidence that he had not informed Mangal & Suklal that thieves assaulted his father, whereas, Mangal (PW-5), Hemlal (PW-6) & Suklal (PW-7) in their evidence have categorically stated that when Chetan came to them, he informed them that thieves have assaulted his father. Therefore, there is material contradiction in the evidence of Chetan (PW-4) and in the evidence of these three witnesses viz., Mangal (PW-5), Hemlal (PW-6) & Suklal (PW-7).

Apart from that, on the information given by Chetan (PW-4), they informed Kotwar Patiram who has not been examined by the prosecution and as per the first information report (Ex.P-1), Patiram came and informed Gangaram

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

~~who lodged the report (Ex.P-1) in which it has been mentioned that on~~ enquiry, the accused informed him that thieves assaulted deceased Jaipal. Why this fact of witnessing the incident of attack made by the accused on her husband, by Chetan (PW-4) has not been mentioned in the F.I.R., creates doubt about the veracity of the evidence of PW-4. In para 4, Gangaram (PW-1) has categorically stated that he lodged the report after enquiring from wife & son of the deceased, whereas, it has not been mentioned in the F.I.R. that Chetan informed Gangaram that he witnessed the assault made by the accused on her husband Jaipal. From the perusal of whole evidence, it is evident that in fact, some thieves or some other persons trespassed the house of the deceased and during that period, the incident took place. Chetan (PW-4) has further stated that when his father fell down, lamp went off and during that period the incident happened and there was darkness. Therefore, there was no occasion for this witness to witness the accused assaulting the deceased. Moreover, there is nothing on record, which goes to show that in any way there was motive behind committing the murder of her husband by the accused/appellant.

In the circumstances, we are of the considered opinion that the prosecution has not been able to prove the offence against the accused beyond reasonable doubt. Therefore, finding of the trial Court convicting the accused/appellant under Section 302 of the I.P.C. for committing the murder of her husband Jaipal cannot be sustained.

In the result, the appeal succeeds and the same is allowed. Conviction and sentence imposed upon the accused under Section 302 of the I.P.C. are set

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	aside. The accused is acquitted of charge under Section 302 of the I.P.C. She be set at liberty forthwith, if not required in any other case. Parties are entitled for certified copy of this order. Sd/- L.C.BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge

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